

REMARKS/ARGUMENTS

This Amendment is filed in response to the Office Action mailed January 26, 2005. Claims 1-17 and 42-44 were pending. Claims 1-6, 8-11, 13-15 and 17 were rejected under 35 U.S.C. Section 102 as anticipated by U.S. Patent 5,282,326 to Schroer, Jr. et al. Claims 7, 12 and 16 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent 5,282,326 to Schroer, Jr. et al. Claims 42-44 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Patent 5,282,326 to Schroer, Jr. et al as applied to claim 9 in view of Official Notice. The Examiner noted a rejection under 35 U.S.C. Section 112, second paragraph in the Response to Arguments section of the Office Action, but no Section 112 rejection was specifically stated. Applicants respectfully traverse these rejections for the reasons set out hereinafter.

A rejection of claims under 35 U.S.C. Section 112, second paragraph, was not specifically set forth in the Office Action by the Examiner. The Examiner only notes such a rejection in the Response to Arguments section of the Office Action. Applicants are unclear as to the meaning of the Examiner's statement that "this argument will be persuasive in allowing applicant to do so" as regards the claiming of the insole configuration by relating it to the portions of a foot that would come into contact with the insole. In one sense, it appears the Examiner is accepting the effort by Applicants to define the invention as presented, in another sense it appears the Examiner is maintaining a Section 112 rejection. Clarification is respectfully requested.

Applicants respectfully oppose the Examiner's statement that "applicant admits that there is no other way of defining the invention than with respect to the foot". Applicants specifically said "there seems no more definite way to properly describe the invention", not that there is no other way to define the invention. These two statements are quite different.

The rejection of claims 1-6, 8-11, 13-15 and 17 under 35 U.S.C. Section 102(b) as anticipated by U.S. Patent 5,282,326 to Schroer, Jr. et al is also respectfully traversed. There is no disclosure in Schroer, Jr., et al that an insole has a raised arch support portion defined by a curve having a first endpoint located on a medial edge of the insole corresponding generally to a forwardmost medial point of the longitudinal arch and a second endpoint located rearward of the first endpoint on a medial edge of the insole wherein the curve extends forwardly and laterally from the first endpoint through a point generally corresponding to a midway point between a second metatarsal head and a third metatarsal head of the foot, extends rearwardly along a medial edge of a fifth metatarsal of the foot, and extends rearwardly and medially to the second endpoint. As evidence to the contrary, the Examiner refers to Figure 1 of Schroer, Jr. et al. However, the Figure does not provide such disclosure. It is well established that patent drawings are not blue prints. The reference clearly does not teach the critical relationships between the elements of the claimed invention and the human foot that it contacts. The present application,

however, adds to the knowledge in the art by specifically disclosing and claiming the relationships stated.

Further, the Schroer, Jr. et al patent describes that the forward toe portion 4 works to support the metatarsals at Column 7, lines 53-54. The Schroer, Jr. et al patent does not describe the arch portion 8 as supporting the metatarsals. In contrast, the present invention as claimed in Claim 2 provides the curve of the raised arch support portion passes through a point generally in contact with a midway point between a second metatarsal head and a third metatarsal head, and extends rearwardly along a medial edge in contact with the fifth metatarsal head. Claim 4 recites the curve passes through points generally corresponding to the first through fourth metatarsal heads of the foot, and tangent to the fifth metatarsal shaft. Claim 9 has language similar to Claim 2, including also the recitation that the curve extend to a point generally corresponding to the fourth metatarsal head. As the head of the metatarsal is the forwardmost part of the metatarsal, it is clear the present invention assists to support these bones. As it is well understood that a proper rejection under Section 102 must disclose each and every element of the claimed invention, Applicants respectfully request the rejection be withdrawn and the claims allowed.

The Examiner's comments that the raised portion of Schroer, Jr. et al shown in the figures in the patent appears to be located in the same area, and similarly curved when compared to Figure 1 of the present application is not deemed to be relevant. The claimed invention of claims 1-6, 8-11, 13-15 and 17 very specifically set forth the positioning of the arch support portion to benefit the wearer by providing a cushioning, impact absorptive insole that supports both the transverse and longitudinal arches. This positioning of the arch support portion supports the arches in spite of the effects of ageing such as in the critical plantar ligaments. Certainly, just looking at a figures in Schroer, Jr. et al does not teach the critical relations set forth in the present claims.

Similarly, Figure 3 of Schroer, Jr. et al does not disclose the curve extending across a point generally corresponding to a cuboid of the foot, a raised arch support portion with a maximum height dimension substantially midway between a first metatarsal head and an Astragalus of the human foot, or a raised arch support portion has a maximum height dimension midway between a Tibialis Anticus of the human foot.

Again, the Examiner asserts that Figure 3 in Schroer, Jr. et al discloses the present claimed invention. However, Schroer, Jr. et al does not teach any of the critical relationships set forth in the claimed invention.

The rejection of claims 7, 12 and 16 as obvious over Schroer, Jr. et al is also respectfully traversed. Again, the Schroer, Jr. et al patent has no disclosure or suggestion for a curve as set forth above. Thus, these claims are believed patentable over the cited reference as well.

The rejection of claims 42-44 as obvious over Schroer, Jr. et al as applied to claim 9 in view of Official Notice is also respectfully traversed. Claim 43 has been rewritten to incorporate

the content of claim 44 and claim 44 is hereby canceled. Schroer, Jr. et al does not disclose any of the claimed characteristics of the footbed hardness, density and rebound characteristics. Applicants respectfully traverse the Examiner's conclusion that these characteristics are obvious. The Examiner provides no basis for this conclusion, and the only reference cited, Schroer, Jr. et al provides no suggestion for such characteristics. Applicants also respectfully traverse the Examiner's conclusion that the ASTM test itself anticipates the claimed invention. The ASTM test only provides a standard for a characteristic of a material, it does not define an optimum value for the application of the present invention.

New claim 45 has been added by this Amendment to attempt to overcome the Examiner's concern relating to the interfacing of the insole and the human foot that would be supported on the insole.

Applicants respectfully request that a timely Notice of Allowance be issued in this application. A petition for a one month extension of time to respond to the Office Action is filed herewith. No additional fees are believed necessary for the proper filing of this Amendment. However, if any fees are necessary, including any extension fees under Rule 136, please withdraw such fees as are necessary from Deposit Account 50-1274(10368/24701).

Respectfully submitted,



William R. Gustavson
Reg. No. 29,160
(972) 479-0903

Thompson & Gustavson, L.L.P.
9330 LBJ Frwy
Suite 1185
Dallas, Texas 75243
May 25, 2005